

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 1323 of 2001(C)

**OPMV.1096/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
IRINJALAKUDA**

APPELLANT/PETITIONER:

**SURENDRAN,S/O.LATE PONNAPANICKER,
POOLAPARAMBU HOUSE, P.O. PYLOOR,
KOLLANGODE, PALAKKAD DIST.**

**BY ADV. SRI.P.V.CHANDRA MOHAN
SRI.T.VENUGOPALAN**

RESPONDENTS/RESPONDENTS:

**1.KERALA STATE ROAD TRANSPORT CORPORATION,
REP. BY THE MANAGING DIRECTOR, K.S.R.T.C.
THIRUVANANTHAPURAM.**

**2.RAJENDRAN,S/O.RAMAKRISHNAN,ITTITHARAVEETIL,
NEAR PALIYAMTHURUTHU SCHOOL, AANAAPUZHA,
METHALA, KODUNGALLUR.**

**BY ADV. SRI.JAMES KOSHY.N., SC. KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1323 OF 2001 ()

Dated this the 24th day of May, 2007

J U D G M E N T

KOSHY,J.

The appellant filed a claim petition before the Motor Accident Claims Tribunal, Irinjalakuda, for the injuries sustained by him on 11.4.1994 while he was travelling as a passenger in a bus owned by the 1st respondent and driven by the 2nd respondent. He claimed that on account of the rash and negligent driving of the 2nd respondent, left side of the bus hit against an electric post and the appellant who was sitting on a side seat sustained serious injuries to his left hand. He was taken to Medical College Hospital, Trichur, where he was treated as inpatient from 11.4.1994 to 2.5.1994. His left hand was amputated at the shoulder level. The appellant was 20 years old and a manual labourer and on account of the injuries he has become permanently disabled resulting in total loss of earning power. A total claim of Rs.4,38,800/- was made which

was limited to Rs.3,00,000/-. Tribunal found that accident occurred due to the negligence of the 2nd respondent driver of the bus owned by the 1st respondent. Tribunal also found that due to amputation of left hand below shoulder level, there is 40% loss of earning power even though Orthopaedic Surgeon of Medical College Hospital certified this as 50% disability. Average monthly income was taken as Rs.800/- and a total compensation of Rs.1,25,000/- was awarded. Only quantum of compensation is disputed in this appeal.

2. It is not disputed that appellant suffered serious injuries and as a result his left hand was amputated below shoulder level. By Ext.A7 Orthopaedic Surgeon of the Government Medical College Hospital, Trichur certified that there is 50% disability. But for no reason, tribunal assessed percentage of loss of earning power to 40%. Tribunal found as follows:

“The Orthopaedic Surgeon of the Medical College Hospital assessed 50% disability. The petitioner is a cooli labourer. He was aged 20 when he met with the accident. The loss of the upper limb

has certainly affected his earning capacity. As a coolie his occupational disability can be taken as 40% for the purpose of awarding compensation under the head of loss of earning power.”

In Workmen's Compensation Act for amputation below shoulder of left hand, loss of earning capacity is statutorily fixed as 80% as per the schedule. As a manual worker, loss of earning capacity will be more than the physical disability certified by the doctor. In any event, tribunal went wrong in reducing the percentage of disability certified by the Doctor. Hence we are of the opinion that at least 50% loss of earning power ought to have been assessed in this case. Tribunal found that at the time of the accident he was a cooli but fixed Rs.800/- as monthly income. Accident occurred in 1994. As per the 2nd schedule of Motor Vehicles Act, notional income of a non earning person is Rs.15,000/- (Rs.1,250/- per month). There is no justification for taking a lower income to an earning person merely because of absence of data. Hence we fix the notional income of the appellant as Rs.15,000/- per year. Tribunal rightly fixed 17 as the multiplier considering his age (20 years). Then compensation payable for disability and loss

of earning power will be $\text{Rs.}15,000 \times \frac{50}{100} \times 17 = \text{Rs.}1,27,500/-$. Tribunal awarded Rs.17,720/- for disability and Rs.65,280/- for loss of earning power. Thus amounting to Rs.83,000/- ($\text{Rs.}17,720 + 65,280 = \text{Rs.}83,000/-$) have to be deducted and balance of Rs.44,500/- ought to have been awarded as compensation for permanent disability and loss of earning power together. Tribunal found that he was completely laid up for four months and Rs.3,200/- was awarded as loss of actual earning for four months by taking Rs.800/- as monthly income. Since we have fixed Rs.1,250/- as monthly earning, he is entitled to Rs.1,800/- more under this head. Even though his left hand was amputated and he had inpatient treatment in the Medical College Hospital and regular follow up treatment thereafter also for considerable time as found by the tribunal, only Rs.5,00/- was awarded for medical and treatment expenses on the ground that he was able to produce bills for medicines only to the tune of Rs.493/-. Considering the long treatment, we are of the view that he is entitled to another Rs.1,200/- on this count. Thus appellant is entitled to an additional amount of Rs.47,500/- over and above the decreed

amount. Even though it was argued that amounts awarded under other heads are very low considering the total amount granted, we are not granting enhancement of compensation under other heads. Hence 1st respondent is directed to deposit Rs.47,500/- with 8% interest from the date of application till deposit within three months from the date of receipt of a copy of this award. Since 12 years have lapsed after the accident, on deposit of the amount, after deducting the additional court fee, balance can be withdrawn by the appellant. Accordingly appeal is allowed partly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1323 OF 2001 ()

J U D G M E N T

24th May, 2007